FAO No.1931 of 2005(O&M)

Surjit Singh Versus New India Assurance Co.and others

Present: Mr.PBS Goraya, Advocate
for the appellant.

***

UMA NATH SINGH, J.(oral)

Heard on CM No.8073-CII of 2005 (Application for exemption from depositing statutory amount of Rs.25,000/- under Section 173 of the Motor Vehicles Act). It appears from the averment so also the submission of the learned counsel for the appellant that the entire compensation amount has already been deposited. Accordingly, C.M. is allowed and the appellant is exempted from depositing the statutory amount.

FAO No.1931 of 2005

This FAO arises out of an award dated 1.2.2004 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Amritsar in MACT case No.54 of 2.3.1996/19.5.1997/10.1.2004 awarding a sum of Rs.2,06,680/- in a death case of 50 years old man.

Learned counsel for the appellant -owner submitted that though liability was fastened on the Insurance Company to pay the amount to the third party with liberty to recover from the owner, but since the amount was already deposited by the appellant, the Insurance Company was not called upon to pay the said amount. As held by the Hon'ble Apex Court in **United India Insurance Co.Ltd. Versus Lehru and others**, **(2003)3 Supreme Court Cases 338,** the onus was cast on the Insurer to prove that the owner of the vehicle had not taken adequate care before employing the driver. Learned counsel also submitted that in the cross-examination, the appellant – owner has stated that “I had seen the licence of the driver before

employing him. The licence was issued from the State of Rajasthan". Thus, learned counsel submitted that the Insurance Company should have proved that the owner of the vehicle was not satisfied about the fact that the driver was not holding a valid driving licence. According to him, there was no breach of condition of policy as such.

We are not in agreement with the submission for the reason that in **United India Insurance Vs. Lehru's case** (supra), the Court has held that prior to hiring of a driver, the owner should satisfy himself that the driver has a licence and was driving competently. A similar view was also taken in the case of **National Insurance Company Ltd. Versus Swaran Lata, 2004(3) SCC 297,** and further in a latest judgment of Hon'ble the Apex Court reported in **National Insurance Company Ltd. Versus Kanti Devi and others, 2005(5) SCC 789.** In the latest judgment, the earlier judgments of Hon'ble the Apex Court in the matters of **Swaran Lata and Lehru etc.** (supra) have also been considered. The Court has concluded that in such cases, the Insurance Company has to prove that the insured did not take adequate care to find out the genuineness of the driving licence. It is obvious from cross-examination of the owner of the vehicle that except seeing the driving licence, he did not take any further step. Accordingly, we are unable to persuade ourselves to hold that there is no breach of condition of policy. Therefore, the FAO being devoid of any merit is hereby dismissed.

(UMA NATH SINGH)
JUDGE

(S. D. ANAND)
JUDGE

August 3, 2006
SRM